

REMARKS

Reconsideration is requested.

Claims 1-9 have been canceled, without prejudice.

Claims 10-23 have been added and find support throughout the specification. No new matter has been added.

Claims 10-23 are pending.

Reconsideration is requested with regard to the restriction requirement. The Examiner's restriction requirement unfairly requires the applicants to potentially only prosecute genus claims without the ability to amend the claims to a preferred embodiment of, for example, Claim 3, without pursuing claims which have been withdrawn from consideration as allegedly defining a separately patentable invention. The application discloses, as a specific embodiment of the present invention, the binding of an anti-CRP antibody to immobilized phase, such as was originally recited in claim 3. Such an immobilization is an aspect of the claimed invention which, the applicants believe, should not be held to define a separately patentable invention. The presently claimed invention provides, for the first time, the use of labeled phosphorylcholine, such as is recited in the claims, to measure C-reactive protein. Prior methods of measuring C-reactive protein included measurement with a labeled anti-CRP antibody, which the applicants have found to be inaccurate in measuring CRP in the serum from humans. See, for example, the description in the present specification on pages 13-14. The cited art, such as Hokama (Journal of Reticuloendothelial Society, 1964-1973 (1973), 13(2), 111-1121 [sic]) and Kishida (Ensho, 1989, 9(5), 369-4290 [sic]) (abstracts only), cited by the Examiner, fail to teach or suggest the use of labeled

phosphorylcholine, as presently claimed. The Examiner is requested to reconsider the restriction requirement in view of the presently claimed invention and withdrawal of the same. Examination of all the claims is therefore requested. The undersigned notes that the Examiner should, upon request by the applicants in particular, reconsider the appropriateness of the restriction requirement with each amendment.

The specification has been amended to include a cross-reference to the Japanese priority document even though the same is not required. See, Rule 78, which only requires a cross-reference to U.S. applications and PCT International applications designating the U.S.

Acceptance of the drawings by the draftsman is acknowledged, with appreciation.

Consideration of the previously cited art is acknowledged, with appreciation, as noted on page 3 of the Office Action dated April 9, 2003 (Paper No. 10). The undersigned notes that the references listed in the PTO-1449 Form executed March 24, 2003 and April 26, 2003, appear to be the same references. The Examiner is requested, for completeness, to assure that the references are not listed in duplication on any patent issuing from the present application. The undersigned regrets the duplication and any inconvenience the same may cause the Examiner.

The specification has been amended on page 18 to include the generic description of Tween 20 and TRITON X-100, in response to the Examiner's comments on page 4 of Paper 10 and the objection to the specification stated therein. The applicants note, for completeness, that the term "XENON" is not a term covered by a trademark but rather is an element in the Periodic Table. Amendment with regard to the

use of the term "XENON" is not believed to be required. Moreover, the term "Fisher" is a name of a company and it is not believed to include or require a generic description. Withdrawal of the objections to the specification noted on page 4 of Paper No. 10 is requested.

The specification has been amended to include a new Abstract in response to the Examiner's comments on page 4 of Paper No. 10. Acceptance of the Abstract in the Examiner's next Action is requested.

The Section 112, second paragraph, rejection of claims 1-2 and 4-7 is obviated by the above amendments. The applicants believe that the claims have been amended in accordance with the Examiner's helpful comments and the amended claims are submitted to be definite.

The Section 112, second paragraph, rejection of claims 1-2 and 4-7 noted in paragraph 10 of Paper No. 10 is moot in view of the above. Method steps have been included in the claimed process in response to Examiner's comments. The claims are submitted to be definite.

The Section 112, first paragraph, rejection of claims 1-2 and 4-7 stated in paragraph 11 of Paper No. 10 is moot in view of the above. A separation step has been included in the claims in response to the Examiner's comments and the claims are submitted to be supported by an enabling disclosure.

The Section 102 rejection of claims 1, 2 and 4 Liberda (Chimia, 53, 1999, 528-532), is moot in view of the above. The claims are submitted to be patentable over Liberda. The applicants note that the cited reference indicates on page 532 that the report was received by the Journal on September 11, 1999. The publication must have

been made subsequent September 11, 1999, which is after the March 3, 1999, filing date of the priority application in Japan 55352/1999. An English Translation of the priority document is being prepared and will be filed under separate cover once received by the undersigned. The claims are patentable over Liberda.

The Section 102 rejection of claims 1, 2 and 4 over Heggli (GB2217335A) is moot in view of the above. Heggli fails to teach each and every aspect of the presently claimed invention as Heggli fails to teach the use, for example, ^{*}of a labeled phosphorylcholine component.) The claims are submitted to be patentable over Heggli.

NOT IN
CLAIMS

The Section 102 rejection of claims 1, 2 and 4 over Hokama (abstract only) is moot in view of the above. The Examiner asserts that Hokama "disclosed a method of phosphorylcholine thymidine leukocyte via C-reactive protein binding. See abstract." See, page 9 of Paper No. 10. The applicants are unclear as to whether the Examiner is asserting that Hokama discloses a method of measuring C-reactive protein with a labeled phosphorylcholine or some other method. In fact, the Abstract of Hokama relied upon by the Examiner discloses the following:

The incorporation of thymidine-3H by leukocytes decreased in the presence of C-reactive protein and the affect could be reversed in the presence of phosphorylcholine. It was suggested that decreased incorporation was due to the binding of C-reactive protein to the leukocyte surface."

This Abstract merely teaches that C-reactive protein binds to a leukocyte surface and that the decrease incorporation of thymidine-3H by leukocytes in the presence of C-reactive protein could be reversed by phosphorylcholine. The Abstract does not specifically disclosure or suggest the presently claimed method or any direct binding of

phosphorylcholine with C-reactive protein. The Examiner is requested to forward a complete copy of the reference if there is more that the Examiner is relying on in rejecting the claims. The claims are submitted to be patentable over the Abstract of Hokama.

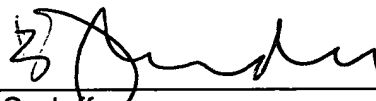
The Section 103 rejection of claims 5-7 over Liberda, Heggli or Hokama, each in view of Hemmila (Analytical Biochemistry, 137, 335-343, 1984), is moot in view of the above. As none of the primary references teach or suggest the presently claimed invention, for the reasons noted above, the additional inclusion of a reference alleged to teach a lanthanide as a marker, as the Examiner alleges with regard Hemmila, will not cure the deficiencies of the primary references. The claims are submitted to be patentable over the cited art.

Consideration of the above and a Notice of Allowance are requested.

The Examiner is requested to contact the undersigned if anything further is required in this regard.

Respectfully submitted,

NIXON & VANDERHYTE P.C.

By: 
B. J. Sadoff
Reg. No. 36,663

BJS:plb
1100 North Glebe Road, 8th Floor
Arlington, VA 22201-4714
Telephone: (703) 816-4000
Facsimile: (703) 816-4100